Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

CUSTOMS Appeal No. 10512 of 2022- DB

(Arising out of OIA-JMN-CUSTM-000-APP-13-22-23 dated 28/04/2022 passed by Commissioner of CUSTOMS-JAMNAGAR(PREV))

KALSI TUBE PRODUCTS INDIA ....**Appellant**
1829 Kalisian Street Gill Road
Ludhiana, Panjab

VERSUS

C.C.-JAMNAGAR(PREV) ......**Respondent**
Sharda House...Bedi Bandar Road,
Opp. Panchavati,
Jamnagar, Gujarat

APPEARANCE:
Shri Devendra Kumar, Advocate for the Appellant
Shri Tara Praksah, Deputy Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. 10437/2024

DATE OF HEARING: 20.10.2023
DATE OF DECISION: 20.02.2024

RAMESH NAIR

The brief facts of the case are that the Appellant is engaged in the manufacture of Bicycle parts. For manufacturing of the aforesaid subject products, the Appellant imports unfinished rough cold forge as raw material to be used the same in the manufacturing of the subject goods. During the course of assessment of bills of entry, it was observed that the Appellant had imported unfinished rough cold forge and classified the same under chapter heading CTH 73269099 whereas the department is alleging that the same be classified under chapter heading 8714 when the appellant has mentioned the description of the goods to be Bicycle Parts.

2. Shri Devendra Kumar, Learned Advocate appearing on behalf of the Appellant submits that vide Order in Appeal No. 04/DC/GPPL/KALSI TUBE/2020 – 21 dated 28.04.2022 the Learned Commissioner has upheld

the classification of the imported goods – unfinished cold forge under CTH heading 87149990. He submits that the Department has classified the Imported goods under CTH heading 87149990 without considering the nature of the imported goods. He submits that the Department has disregarded that the condition of the goods at the time of import which is a material factor for the purposes of ascertaining the heading under which such goods shall be classified. He takes support of the judgment of the Hon'ble Supreme Court in Dunlop India v. UOI 1983 ELT 1556 (SC) and GLAXO Laboratories Ltd. 1985 (21) ELT 72 in this regard. He further submits that the said goods are required to further undergo a complex process including reaming, threading, re-tapping, press cutting, brazing, cutter drain holes, vibratory finishing to name a few, in order for them being able to be sold in the market and the current state in which the goods persist do not allow the same to happen. He further submits that the lower authorities have not appreciated the submissions made by the Appellant and upheld the classification under CTH heading 87149990 when it fulfills the characteristics of goods falling under CTH heading 73269099.

3. Shri Tara Prakash, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that the main issue to be decided in the present case is whether the said subject goods shall be classified as Bicycle Parts under chapter heading 8714 as upheld by the Adjudicating Authorities or under chapter heading 73269099 as claimed by the Appellant. The headings have been extracted below for ease of reference: -

CTH Heading	Heading Description	BCD	IGST
8714	Parts and accessories of vehicles of heading Nos. 87.1 to 87.13	20%	12%
87149990	Parts and accessories of bicycles and other cycles (including delivery tricycles) not motorized, of 87.12		

CTH 7326	Other articles of Iron or Steel *Forged or stamped, but not further worked:*	BCD	IGST
73269099	Other	10%	18%

4.1 In the present case we are of the view that the lower authorities have not appreciated the nature and characteristics of the product in question before raising the issue of classification but have simply relied on the description made by the appellant in the bills of entry. As regards the submission made by the Appellant as to why they have classified their goods under chapter heading 73 it is submitted to be on the basis of the nature of the product whereby it being unfinished that it requires to undergo further processing to attain essential character of bicycle parts.

4.2 We observe that for the purposes of classifying subject goods under chapter heading 8714 it needs to fulfill the criteria of having essential characteristics of the finished product. We observe that in order to aid classification it needs to be first decided whether the said product appeared to have represented any bicycle part for which, no evidence has been put forth by the department. Therefore, prima facie it appears that the said products will fall under chapter heading 73 unless any such characteristic of the product suggests to the contrary. Therefore, it is important to establish the features of the product before classifying it under the appropriate chapter. Basically the issue needs to be verified from the factual matrix before dwelling into appropriate classification. Hence in view of the foregoing discussion and findings we remand the matter back to the adjudicating authority to reconsider the issue afresh by taking into consideration the claims made by the appellant as regards the nature of the subject goods. We make it clear that we have not recorded any findings on the merits of the case and are leaving the issue open.

5. The impugned order is set aside and appeal is allowed by way of remand to the Adjudicating Authority.

(Pronounced in the open court on 20.02.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha